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Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAY - 4 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Assessment and Collection ) MD Docket No. 98-36  
of Regulatory Fees for )  
Fiscal Year 1998 )

To: The Commission

REPLY COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys,  
hereby replies to the comments of other parties in response to the Commission's  
Notice of Proposed Rulemaking in the above-captioned docket, FCC 98-40, released  
March 25, 1998.

The comments confirm GE Americom's demonstration that the  
proposed fee for geostationary space stations lacks a rational relationship to the  
underlying costs of regulating such satellites. The absence of a nexus between the  
benefits conferred by Commission regulation of geostationary satellites and the fees  
imposed raises Constitutional questions regarding the validity of the Commission's  
fee proposal. The comments also show that COMSAT should be subject to  
regulatory fees as a provider of space segment. Finally, GE Americom agrees with  
other parties that the Commission cannot lawfully impose international bearer  
circuit fees on non-common carriers.

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**I. THE PROPOSED FEE FOR GEOSTATIONARY SPACE STATIONS CANNOT BE JUSTIFIED**

The record here demonstrates that the Commission's proposed per spacecraft fee for geostationary satellites is unreasonable. The fee does not represent the applicable costs of ongoing regulation of operational spacecraft. To the extent the fee is not cost-based, it represents an unlawful tax.

**A. The Proposed Fee Does Not Accurately Reflect Resources Expended to Regulate Operational Satellites**

GE Americom showed in its comments that the Commission's proposal to increase the regulatory fee for geostationary satellites to \$119,000 cannot be justified. Once licensed, such satellites require very little ongoing Commission oversight. Most Commission proceedings in the satellite field deal with the establishment of services in new frequency bands. The Commission cannot recoup the costs of new service development from existing satellite providers.

GE Americom Comments at 3-4.

Other commenters agree. Loral, for example, points out that the Notice "provides no evidence that the proposed fee increases are concomitant with increases in the Commission's workload in regulating the applicable Commission licensees." Loral Comments at 2. *See also* Satellite Industry Association ("SIA") Comments at 2. Several commenters observe that the most resource-intensive aspect of the Commission's activities with respect to geostationary satellite operations relates to the processing of satellite applications. Columbia Comments at 3 n.3; Loral Comments at 3; PanAmSat Comments at 2; SIA Comments at 2.

However, the Commission already imposes a substantial application fee to recoup these costs.

Columbia confirms that it appears that the Commission is improperly including in the costs identified for regulation of existing space stations expenditures that in fact were incurred with respect to the development of new satellite services. Columbia Comments at 3-4; *see also* SIA Comments at 2. This results in existing providers being taxed to support the development of competing services. Columbia shows that the costs of establishing new services must be treated as overhead to be recovered from all fee payers or eliminated from the Commission's fee calculations. *Id.* at 4.

Every current provider of U.S.-licensed geostationary satellite services has demonstrated in this proceeding that the Commission's proposed regulatory fee for geostationary spacecraft bears no meaningful relationship to the underlying costs of regulation. On the basis of the record here, the Commission must reconsider the appropriate fee level for geostationary satellites.

**B. The Commission Lacks Authority to Impose a Fee Not Based on Regulatory Costs**

In its comments, PanAmSat demonstrates that to the extent a "fee" does not bear a substantial relationship to the costs of regulation, it represents a tax. The delegation of taxation authority to an administrative agency is lawful only if conditions designed to protect the rights of private parties are met. PanAmSat argues that the lack of a nexus here between the costs of regulation and the

geostationary satellite fee, combined with the limitations on available judicial review of Commission fee decisions, raise Constitutional questions about the Commission's fee proposal. PanAmSat Comments at 3 (citations omitted).

GE Americom agrees that the Commission lacks authority under applicable law to impose as a "fee" an assessment that does not accurately reflect the benefits of regulation. The Commission must decrease the geostationary satellite fee to bring it in line with the reasonable costs of regulating operational satellites.

## **II. COMSAT MUST BE REQUIRED TO PAY ITS FAIR SHARE OF REGULATORY COSTS**

GE Americom agrees with Columbia's observation that it is inequitable not to apply space station fees to COMSAT. Columbia Comments at 8-9. Private providers of satellite services such as GE Americom compete directly with COMSAT for customers. This competition is skewed, however, by regulatory fees that apply to private operators but not to COMSAT. As Columbia notes, "[i]n effect, private industry is subsidizing Comsat." Columbia Comments at 9.

The Commission should address this inequity by applying the space station fee to COMSAT. Doing so would ensure that COMSAT pays at least some share of the costs the Commission incurs in regulating COMSAT's operations.

### **III. IMPOSING INTERNATIONAL BEARER CIRCUIT FEES ON NON-COMMON CARRIERS IS UNLAWFUL**

A number of commenters object to the Commission's proposal to collect fees for international bearer circuits from non-common carriers. *See* Columbia Comments at 7-9; Loral Comments at 4-5; PanAmSat Comments at 4-5. These commenters demonstrate that the Commission's proposal is inconsistent with the statutory definitions applicable to the Commission's regulatory fee program. *See, e.g.,* PanAmSat Comments at 4. For this reason, the Commission should not adopt its proposal. International bearer circuit fees should be imposed only on common carriers.

As Columbia observes, limiting the applicability of the international bearer circuit fees is justified by the different regulatory treatment of common and non-common carriers:

Because common carriers are closely regulated by the Commission under Title II, they are a source of significant administrative costs for the agency. By contrast, the FCC does not regulate non-common carriers in the same manner, and thus must not impose fees meant to cover the costs of common carrier regulation upon entities that are not subject to such regulation.

Columbia Comments at 8. *See also* Loral Comments at 5 (the FCC cannot reclassify services for fee collection absent a change in underlying regulatory treatment).

Restricting application of the fees also reflects competitive realities. As PanAmSat notes, private satellite carriers do not compete significantly for PSTN traffic with common carriers. PanAmSat Comments at 4-5.

Thus, the Commission's proposal to collect international bearer fees from non-common carriers directly conflicts with statutory authority. The proposal ignores both the differences in regulatory treatment of common and non-common carriers and the absence of substantial competition between the two classes of carriers for PSTN traffic. The Commission should re-visit this issue and limit applicability of the international bearer circuit fee to common carriers.

### CONCLUSION


For the foregoing reasons, GE Americom urges the Commission to revise its proposed regulatory fee scheme by adjusting the fee for geostationary spacecraft to more accurately reflect the costs of regulation; requiring COMSAT to pay space station fees; and applying international bearer circuit fees only to common carriers.

Respectfully submitted,

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May 4, 1998

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Reply Comments of GE  
American Communications Inc. were served by hand delivery this 4th day of May,  
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